treatment. The plaintiff accordingly sues her in tort for the loss of her husband's *consortium*.

Mr. Braddell argued that under the Common Law of England no such action would lie, and that there were no reported cases in which damages had been awarded against a mother-in-law as such, though it was common knowledge that hundreds of otherwise happy marriages had been broken up by their sinister activities. I think the argument can be carried a little further. For either spouse to leave the *consortium* of the other is a matrimonial offence, and I have already held that in the Federated Malay States, the Courts cannot take cognizance of a matrimonial offence amongst Chinese. If that is the case, how can a third party be sued in tort for inducing the commission of an offence of which the Court cannot take cognizance?

Assuming, however, that English Common Law principles apply, what is the established law on the subject? An action can apparently be brought by the wife against a third party for being directly responsible for the loss of her husband's *consortium*, *Lynch* v. *Knight*, 9 H.L.C. 577; 11 E.R. 854, although in that case a slander uttered to the husband and resulting in his driving his wife out of the house was held not to have been the natural and reasonable cause of the loss of such *consortium*. In the recent case of *Place* v. *Searle*, (1932) 2 K.B. 497 at page 513, Scrutton, L.J. approves the statement of the law in Lush's Husband and Wife, page 3, which reads:—

> "It is the duty of the wife to reside and consort with her husband. This is a duty which she owes him and a person who tempts or entices her to violate this duty commits a wrong towards the husband, for which he is entitled to recover damages."

At page 517 Greer, L. J. approves of this passage, though he would substitute the words "procures entices or persuades" for "tempts or entices." The form of action is open to both husband and wife, and this statement of the law has been followed by Swift, J. in the more recent case of *Newton* v. *Hardy* decided last month and not yet reported.

What it amounts to is this, that if the third defendant had "procured enticed or persuaded" her son to leave the plaintiff, the plaintiff's action would lie, so also presumably if the third defendant had "procured enticed or persuaded" the plaintiff to leave her son, an action against her would lie on the part of the son. But neither of these things happened. It was the plaintiff who committed the matrimonial offence, and now she is suing a third party who, she says, induced her to commit. It is as if a person assaulted another at the instigation of a third party, and then sued the instigator for having induced him to commit the assault. It may be true that it was the third defendant's treatment of her which finally induced the plaintiff to leave, but the actual loss of her husband's *consortium* was the result of her own act, done at her own volition. I am quite satisfied that there is no such form of action which from its very nature puts the plaintiff out of Court.

I hold, therefore, that none of the plaintiff's claims can be supported, and that the action must be dismissed with costs.

Judgment accordingly.

JOHORE.

[APPELLATE CIVIL JURISDICTION]

BURTON, J.

June 11, 1932.

S. R. M. S. PALANIAPPA CHETTIAR **Plaintiff.**

vs.

LIM HENG HIM ..... **Defendant.**

[MUAR MISCELLANEOUS APPLICATION No. 189 of 1931]

Land—Surat Semantara—Subject of charge—chargee, a decree-holder—whether a secured creditor—Civil Procedure Code, S. 296 of the Civil Procedure Code.

A Surat Semantara being an alienable interest can be the subject of hypothetication, notwithstanding the absence of any provision of law for the registration of such a charge.

Where a person sues his debtor for repayment of a loan secured by a charge on the debtor's property which is held under a Surat Semantara and obtains judgment, such a person is a "secured creditor" within the meaning of section 296 of the Civil Procedure Code of Johore.

The plaintiff in this case obtained in the Magistrate's Court at Muar a decree in default of appearance for the payment by the defendant of a sum of money lent to him by the plaintiff, the repayment of which was secured, or intended to be secured, by a charge over the land comprised in a certain Surat Semantara. As a Magistrate's Court has no power to order a sale of immoveable property, the plaintiff applied to the Supreme Court, for execution of his decree by the attachment and sale of the defendant's interest in the land over which he held a charge, and asked that the land be sold free of charge and that the plaintiff be deemed a preferential creditor.

The application was heard by Mr. O. H. Grove on the 28th December 1931.

M. V. Pillai for the plaintiff.

Cur. Ad. Vult.

O. H. GROVE, ASST. REGISTRAR, MUAR, —In this matter the decree holder has applied for the land occupied under S.S. 899/26 in the mukim of Serom to be sold free of encumbrance and for a declaration that he is entitled to rank as a preferential creditor.

2. If the decree holder wishes the land to be sold free of encumbrance he should first remove the charge from the Land Office register. Even though the charge may be of no effect, so long as it is recorded in the Land Office there is notice to the public of the encumbrance and a sale under such circumstances could not be expected to realise a fair price. It would be a different matter entirely if the sale were in pursuance of the charge when on completion of the sale the charge is automatically removed from the register and the purchaser becomes the owner of the land without encumbrance.

3. There is no provision in the Land Enactment or Rules for charging lands occupied under Surat Sementara, and the decree holder was aware of this when in lieu of applying to the Collector for a sale of the land he took action in the Magistrate's Court and obtained a decree on the evidence of the undertaking in the charge. He now claims to be both chargee and decree holder. As chargee he seeks preferential treatment and as decree holder he applies for attachment and sale of the property.

4. If his contention is correct and the land realises more than what is due to him he would be in the happy position of being paid twice. As chargee he would take what is due and then be able to claim proportionally with other creditors on his decree.

5. In the absence of any provision of Law to that effect I hold that a document of charge over the land occupied under Surat Sementara gives no claim to priority.

The plaintiff appealed and the appeal from the decision of the Assistant Registrar, Muar, came on for hearing before Burton, J. on 11th June, 1933.

Knowles (*Goho* & *Pillai* with him) for appellant.

Cur. Ad. Vult.

BURTON, J.—The defendent is the owner of Surat Sementara No. 899 26 which he charged in favour of the plaintiff. The charge was recorded in the register of Surat Sementara. But Land Rule 7 (vi) (c) provides that

> " the provisions of sections 43, 44, 45, 48 & 50 (ii) of the Enactment shall be followed by the Collector"

and omits reference to Sections 46 and 47. It has accordingly been the practice not to apply for an order of sale in the case of a Surat Sementara in the same way as a charge is enforced upon a Registered Title, but to sue on the covenant and obtain a decree. In this case the Chetty duly obtained a decree for the amount due on the charge. He proceeded to attach the land and applied that it "be sold free of charge and that the plaintiff be deemed to be a preferential creditor."

The Registrar refused the order. He says—"There is no provision in the Land Enactment or Rules for charging lands occupied under Surat Sementara, and the decree holder was aware of this when in lieu of applying to the Collector for a sale of the land he took action in the Magistrate's Court and obtained a decree on the evidence of the undertaking in the charge. He now claims to be both chargee and decree holder. As a chargee he seeks preferential treatment and as a decree-holder he applies for attachment and sale of the property."

I think, however, the Registrar was mistaken. A Surat Sementara is property and can accordingly be hypothecated. The absence of any provision for registration of a charge does not mean that the hypothecation cannot be made. The defendant contracted to hypothecate his land, and it follows that the plaintiff has a right *ex contractu* to be treated as a preferential creditor. The land may be sold either subject to or free from encumbrance. But in this case the encumbrancer is the decree holder and the decree he holds is in respect of the encumbrance, so that I cannot see how the land can be sold otherwise than free from encumbrance; and as the parties have contracted that Palaniappa Chettiar shall have a charge on the property, and it is not alleged the charge is bad, he must have a preferential claim on the proceeds.

The appeal must therefore be allowed.

Appeal allowed.